

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

MACY'S WEST STORES, INC.
Employer

and

Case 32-RC-246415

TEAMSTERS LOCAL 287
Petitioner

ORDER

The Petitioner's Request for Review of the Regional Director's Decision on Exceptions to Hearing Officer's Report and Certification of Results of Election is denied as it raises no substantial issues warranting review.¹

¹ In denying review of the Regional Director's determination that the JC Support employees may not be included in the unit, and are therefore ineligible to vote, we agree with her conclusion that they do not share a community of interest with the other petitioned-for employees, for the reasons stated in her decision. We further clarify, however, that, where no party asserts that the smallest appropriate unit must include employees excluded from the petitioned-for unit, it is unnecessary to apply the three-step analysis set forth in *The Boeing Company*, 368 NLRB No. 67 (2019), which applies "when a party asserts that the smallest appropriate unit must include employees excluded from the petitioned-for unit." *Id.*, slip op. at 2. It is true that steps one and three of *Boeing*—the requirement that any appropriate unit have an internal community of interest, and that consideration must be given to the Board's decisions on appropriate units in the particular industry involved—reference broad principles that are generally applicable to unit determinations. Step two, however—which considers "whether the petitioned-for employees share a community of interest sufficiently distinct from employees excluded from the proposed unit to warrant a separate appropriate unit," *ibid.* (internal quotations omitted)—only applies if a party contends that additional employees must be included in the unit to render it appropriate, a situation that is not present in this case.

In denying review of the Regional Director's conclusion that employees Naranjo, Roberts, and Martinez are not eligible to vote under the Stipulated Election Agreement, we apply *Caesar's Tahoe*, 337 NLRB 1096 (2002), as follows. First, we find that the disputed eligibility language in the Stipulated Election Agreement is boilerplate language reiterating the Board's well-established *Davison-Paxon Co.*, 185 NLRB 21 (1970), eligibility formula, and is therefore "unambiguous" under the first step of *Caesar's Tahoe*. Second, we find that the Stipulated Election Agreement also unambiguously excludes Shoe Sales Associate Roberts and VP Merchandisers Martinez and Naranjo from the unit. See *Royal Laundry*, 277 NLRB 820, 821 (1985) ("Where, as here, there

JOHN F. RING,	CHAIRMAN
MARVIN E. KAPLAN,	MEMBER
WILLIAM J. EMANUEL,	MEMBER

Dated, Washington, D.C., May 27, 2020.

exists a job description or title that is the same as the express language used in the unit description, the Board will find a clear objective intent to include the affected employees in the unit and the parties will be bound by their stipulation.”). As this issue is properly resolved at the first step under *Caesar’s Tahoe*, it is unnecessary to reach or rely on *Butler Asphalt L.L.C.*, 352 NLRB 189 (2008), a two-member Board decision. See *New Process Steel, L.P. v. NLRB*, 560 U.S. 674 (2010).